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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,850	05/17/2006	Deborah Addison	JJM5024USPCT	8913

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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.
Intellectual Property Department
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EXAMINER

ROBINSON, JAMES MARSHALL

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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01/23/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/579,850	Applicant(s) ADDISON ET AL.	
	Examiner James M. Robinson	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to amendments/arguments filed 09/29/2008. Currently claims 1-5 and 7-13 are pending and claims 1, 7, 8, 11 and 13 are amended. Claims 6 and 14-19 are cancelled. Although applicant asserts the subject matter of claim 6 has been inserted into claim 1 examiner notes the amendment to claim 1 is not an identical recitation of the subject matter originally claimed.

Response to Arguments

1. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 0326844.8, filed on 11/18/2003.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "the salt complex" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1- 5, 7, 11 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Canada et al. (US 7118761).

Regarding claim 1, Canada discloses a wound dressing material (col. 1, lines 7-8) comprising a polymeric substrate (col. 6, lines 15-27), a silver salt (col. 8, lines 21-42) which is a complex of Ag⁺ and an anionic polymer, and a dyestuff (col. 7, lines 53-61) to photostabilize the silver salt.. Regarding "dyestuff to photostabilize the silver salt," the limitation has been treated as an intended use recitation. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Since the limitation has not been positively claimed, the dyestuff of the Lilienfeld patent is capable of performing the recited function.

Regarding claims 2-5, Canada discloses a wound dressing material wherein the substrate comprises a solid biabsorbable material such as oxidized cellulose (col. 6, lines 25-26) in woven form (col. 5, lines 27-29).

Regarding claim 7, Canada discloses a wound dressing material wherein the salt complex comprises from about 0.01 wt. % to about 5 wt. % of silver, based on the dry weight of the composition (col. 8, lines 43-55).

Regarding claim 11, Canada discloses a wound dressing material wherein the polymeric substrate consists essentially of a mixture of an oxidized cellulose with a collagen, a chitosan, or both a collagen and a chitosan (col. 4 lines 60 - col. 5, line 1).

Regarding claims 13, there is no positive claimed structure but rather a property met by a test is claimed. The properties of the wound dressing material disclosed in Lilienfeld are the same as those claimed by applicant; therefore Lilienfeld's material would be capable of, if subjected to the DPPH test, exhibiting essentially an antioxidant activity of at least about 15%. Therefore, the limitations of the claim are met.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canada et al. (US 7118761) in view of Gibbins et al. (US 6897349). Canada

substantially discloses the invention as claimed; see rejections to claims 1- 5 and 7 above, including wherein the dyestuff comprises an antioxidant dyestuff (col. 7, lines 53-61). However, Canada is silent to the exact dyestuff selected.

Gibbins et al. discloses a wound dressing comprising a polymeric substrate and a silver salt (col. 1, lines 19-24) and further utilizing the dyestuff trypan blue (col. 29, lines 21-23).

It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the wound dressing material of Canada with a dyestuff that is of the antioxidant type in view of the teachings of Gibbins in order to utilize an antioxidant type dye that is biocompatible.

Regarding claim 10, Canada fails to explicitly disclose the dyestuff is present in an amount of from about 0.2 to about 2wt.% based on the dry weight of the material.

To provide the wound dressing material of Canada with a composition comprising from about 0.2 to about 2wt.% based on the dry weight of the material of dyestuff, based on the dry weight of the composition, it would have been obvious to one of ordinary skill in the art at the time of the invention, in view of the teachings of Gibbins, in order to optimize the anti-microbial effect of the dressing material. Further, it would be obvious to one of ordinary skill in the art to have chosen an optimal concentration by weight of dyestuff, within the claimed range, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canada et al. (US 7118761) in view of Hirsch (1962900).

Regarding claims 12, Canada fails to disclose the use of packaging.

However, Hirsch discloses a wound dressing material wherein the material is packaged in a sterile container (lines 5-11). Further, is well known and conventional in the art of wound dressings to package wound dressing and keep it sterile prior to use and ensure that the dressing will prevent contamination of the wound at the site of bandage application.

It would have been obvious to one of ordinary skill in the art at the time of the invention to package the wound dressing of Canada with the microorganism impermeable container of Hirsch in order to maintain dressing sterility.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Robinson whose telephone number is (571) 270-3867. The examiner can normally be reached on Mon-Fri 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/James M. Robinson/